

Dated: August 8, 2018



*Daniel P. Collins*

Daniel P. Collins, Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF ARIZONA**

In re	)	Chapter 11 Proceedings
	)	
<b>AHMAD WALI MAILATYAR and</b>	)	Case No: 2:17-bk-13538-DPC
<b>EDYTA KAMILA MAILATYAR,</b>	)	
	)	<b>UNDER ADVISEMENT RULING</b>
Debtors.	)	<b>REGARDING DEBTORS'</b>
	)	<b>HOMESTEAD EXEMPTION</b>
	)	
	)	[NOT FOR PUBLICATION]
	)	

Before the Court is Timothy R. Wright's ("Wright") objection<sup>1</sup> ("Homestead Objection") to Ahmad Wali Mailatyar's ("Mr. Mailatyar") and Edyta Kamila Mailatyar's ("Ms. Mailatyar") (collectively "Debtors") claimed homestead exemption. This Court finds Wright has carried his burden of proof. Wright's Homestead Objection is hereby sustained. Debtors' claimed homestead exemption on the home located at 11 East Venado Drive, New River, Arizona ("Venado Property" or "New River Property") is hereby denied. However, the Court finds the Debtors do have a valid homestead exemption in the residence described as 7712 East Journey Lane, Scottsdale, Arizona ("Journey Property" or "Scottsdale Property").<sup>2</sup>

<sup>1</sup> DE 29. "DE" references a docket entry in the administrative file in this case.

<sup>2</sup> This Order sets forth the Court's findings of fact and conclusions of law under Rule 7052 of the Rules of Bankruptcy Procedure.

1   **I.    BACKGROUND**

2           1.       On November 14, 2017 (“Petition Date”), Debtors filed a voluntary chapter  
3   13 bankruptcy petition.

4           2.       Wright filed an Emergency Motion to Convert<sup>3</sup> Debtors’ chapter 13 to a  
5   chapter 7, claiming the Debtors did not qualify for a chapter 13 under § 109(e)<sup>4</sup> of the  
6   Code. The Court agreed with Wright and entered its Under Advisement Ruling on  
7   March 30, 2018.<sup>5</sup>

8           3.       Debtors filed a motion to convert their chapter 13 case to a chapter 11. That  
9   motion was granted on April 3, 2018.<sup>6</sup>

10          4.       Debtors filed their original schedules on November 14, 2017<sup>7</sup> and amended  
11   their schedules on March 8, 2018.<sup>8</sup> Schedule C claimed a \$150,000 homestead  
12   exemption on the New River Property.

13          5.       On January 26, 2018, Wright filed his Homestead Objection.<sup>9</sup> Debtors  
14   filed a response (“Response”)<sup>10</sup> and each of the Debtors filed declarations<sup>11</sup> in support of  
15   their Response. Wright filed a motion to strike Debtors’ Response<sup>12</sup> and filed a reply<sup>13</sup>  
16   in support of his Homestead Objection.

17          6.       On April 2, 2018, the Court held a hearing on the Homestead Objection.  
18   Recognizing the homestead briefing and oral arguments of counsel pointed to material  
19   factual disputes, the Court required the parties to file a joint pretrial statement.<sup>14</sup>

---

21   <sup>3</sup> DE 30.

22   <sup>4</sup> Unless indicated otherwise, statutory citations herein refer to the U.S. Bankruptcy Code (“Code”), 11 U.S.C.  
  §§ 101-1532 and to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037.

23   <sup>5</sup> DE 87.

24   <sup>6</sup> DE 93.

25   <sup>7</sup> DE 1.

26   <sup>8</sup> DEs 62 and 63.

<sup>9</sup> DE 29.

<sup>10</sup> DE 41.

<sup>11</sup> DEs 42 and 43.

<sup>12</sup> DE 55.

<sup>13</sup> DE 56.

<sup>14</sup> DE 177, filed on June 29, 2018.

7. The Court conducted a trial of this matter on July 6, 2018. Following the trial, Wright and the Debtors filed their supplemental briefs<sup>15</sup> after which time the Court took the homestead issue under advisement.

8. Debtors' original schedules<sup>16</sup> valued the Scottsdale Property at \$439,000 and the New River Property at \$349,000. Although the Debtors amended their schedules, the stated values of these two residential properties did not change. Debtors' original schedules<sup>17</sup> reflected the following debts secured by these residences:

**Schedule D - Secured Debt**

Roundpoint Mortgage (New River Property)	\$228,872.82
Rushmore Loan Management (Scottsdale Property)	\$403,943.43
Timothy R. Wright (Scottsdale Property-2nd Lien Position)	\$262,295.56

None of these secured claims were listed as contingent, unliquidated, or disputed.

9. Debtors' Amended Schedule D<sup>18</sup> reflects the following secured debts:

**Amended Schedule D - Secured Debt**

Roundpoint Mortgage (New River Property)	\$230,697.86
Rushmore Loan Management (Scottsdale Property)	\$406,594.52
Timothy R. Wright (Scottsdale Property-2nd Lien Position)	\$262,295.56 <sup>19</sup>

None of these secured claims are listed as contingent, unliquidated or disputed.

10. Wright's claim arises out of a state court judgment<sup>20</sup> in the amount of \$262,295.26<sup>21</sup> dated June 7, 2017. The judgment was recorded in Maricopa County,

<sup>15</sup> DEs 183 ("Wright's Closing Brief") and 184 ("Debtors' Closing Brief").

<sup>16</sup> DE 1.

<sup>17</sup> DE 1 at Schedule D.

<sup>18</sup> DE 62.

<sup>19</sup> This is the amount of the unavoidable pre-bankruptcy judgment lien recorded by Wright.

<sup>20</sup> See Ex. I.

<sup>21</sup> This Court calculates the amount of the judgment against Debtors, as follows: monetary damages of \$88,190, plus punitive damages of \$20,000, plus attorneys' fees of \$140,758.50 (the Court believes that attorneys' fees

1 Arizona on June 8, 2017. The parties agree the Wright judgment lien is not avoidable.<sup>22</sup>

2 11. If the Debtors' homestead exemption claimed on the New River Property  
3 stands, there is no equity in that property to which the Wright judgment lien could  
4 attach.<sup>23</sup> In that instance, Wright would be entitled to stay relief on the Scottsdale  
5 Property.

6 12. If, however, the Court finds the Scottsdale Property is the Debtors'  
7 homestead, Wright's judgment lien would attach to all the equity above the first lien on  
8 the New River Property and Wright would be entitled to stay relief on the New River  
9 Property.

## 10 11 **II. JURISDICTION**

12 This Court has jurisdiction over these matters pursuant to 28 U.S.C.  
13 §§ 157(b)(2)(B) and 1334.

## 14 15 **III. ISSUE**

16 Whether the Debtors' homestead exemption is properly claimed on the New River  
17 Property or the Scottsdale Property?

## 18 19 **IV. ANALYSIS**

### 20 **A. Applicable Law.**

21 On the Petition Date, an estate was created in this bankruptcy.<sup>24</sup> The bankruptcy  
22 estate includes both the New River Property and the Scottsdale Property. Under § 522(b),

23 awarded for Count IV are subsumed in the attorneys' fees awarded for Count I) and costs of \$13,346.76. This  
24 amount is only 30 cents less than the amounts Debtors list in their original and amended Schedule D.

25 <sup>22</sup> In continued pursuit of Wright's claim against the Debtors, Wright commenced adversary case 2:18-ap-163-DPC  
26 seeking to hold Wright's claim nondischargeable under § 523. Wright also commenced adversary case 2:18-ap-  
259-DPC seeking to deny Debtors' discharge in its entirety under § 727.

<sup>23</sup> Value of \$349,000 less 1<sup>st</sup> lien of \$230,697.86 = equity of \$118,302.14, an amount less than the Arizona \$150,000  
homestead exemption claimed by the Debtors.

<sup>24</sup> § 541(a) of the Code.

1 a debtor is permitted to exempt certain property of the estate from creditor claims.  
2 § 522(b)(2) permits a state to opt out of the federal exemption scheme. Arizona has done  
3 so.<sup>25</sup>

4 Homestead exemption claims in Arizona are governed by A.R.S. § 33-1101, *et*  
5 *seq.* Those statutes state, in pertinent part, as follows:

6 **§ 33-1101. Homestead exemptions; persons entitled to**  
7 **hold homesteads.**

8 A. Any person the age of eighteen or over, married or single,  
9 who resides within the state may hold as a homestead exempt  
10 from attachment, execution and forced sale, not exceeding  
11 one hundred fifty thousand dollars in value, any one of the  
12 following:

1. The person's interest in real property in one compact body  
upon which exists a dwelling house in which the person  
*resides*.

(emphasis added).

13 . . .

14 B. Only one homestead exemption may be held by a married  
15 couple or a single person under this section. The value as  
16 specified in this section refers to the equity of a single person  
or married couple. . . .

17 C. The homestead exemption, not exceeding the value  
18 provided for in subsection A, automatically attaches to the  
19 person's interest in identifiable cash proceeds from the  
20 voluntary or involuntary sale of the property. The homestead  
21 exemption in identifiable cash proceeds continues for  
22 eighteen months after the date of the sale of the property or  
until the person establishes a new homestead with the  
proceeds, whichever period is shorter. Only one homestead  
exemption at a time may be held by a person under this  
section.

---

26 <sup>25</sup> A.R.S. § 33-1133(B).

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 20
- 21
- 22
- 23
- 24
- 25
- 26

2  
3  
4  
5  
6

7

8  
9

10  
11  
12  
13  
14

15  
16  
17  
18

19

20

21

22

23

24

25

26

1 A debtor's claimed exemption is presumptively valid. *In re Carter*, 182 F.3d  
2 1027, 1029 n. 3 (9th Cir.1999). The Court must liberally construe the claimed exemption  
3 in favor of the Debtors. *In re Renner*, 822 F.2d 878, 880 (9<sup>th</sup> Cir. 1987); *In re Lee*, 889  
4 F.3d 639, 646 (9<sup>th</sup> Cir. 2018); *In re Garcia*, 168 B.R. 403, 408 (D. Ariz. 1994). The  
5 burden of proof, which is by a preponderance of the evidence, lies with the objecting  
6 party to show that the exemption is not valid. Fed. R. Bankr. P. 4003(c) and *In re Diaz*,  
7 547 B.R. 329, 336 (B.A.P. 9th Cir. 2016). Here, Wright is the objecting party so he bears  
8 the burden of persuasion.

9 In reviewing Wright's objections to the Debtors' claimed homestead exemption,  
10 this Court must focus on the facts as they existed on the Petition Date. *White v Stump*,  
11 266 U.S. 310, 313-14 (1924). This is referred to as the "snap shot rule." *In re Earl*, 705  
12 F. App'x 584, 585 (9th Cir. 2017) (citing *id.* at 313).

13 Because a homestead exemption necessarily implicates where a debtor resides on  
14 the date a bankruptcy is filed, courts evaluate a debtor's intentions as they existed at the  
15 time the petition was filed. *In re Konnoff*, 356 B.R. 201, 204–05 (9th Cir. BAP 2006).  
16 The term "reside" under A.R.S. § 33-1101(a) is generally construed to require "at least  
17 the physical presence of the individual claiming a homestead exemption." *In re Elia*, 198  
18 B.R. 588, 597 (Bankr. D. Ariz. 1996). However, neither occupancy on the date of the  
19 petition nor continued occupancy of the home is required to establish a homestead for  
20 exemption purposes. *In re Calderon*, 507 B.R. 724, 730 (9th Cir. B.A.P. 2014) (Where  
21 Debtor's property was rented out at the filing of his bankruptcy and he stated a vague  
22 intent to return to it, the Court held that in claiming the exemption he was not required to  
23 be present in the residence at the time of the filing). Where a debtor is not physically  
24 present in the claimed homestead at the time of a bankruptcy filing, the court must inquire  
25 into the debtor's intent. If the debtor has the intent to reside elsewhere, the homestead  
26 has been abandoned. The question, then, is whether and when the Debtors abandoned

1 the New River Property as their homestead pursuant to A.R.S. § 33-1104.

2 To determine whether a debtor resides in a property for homestead purposes,  
3 courts consider physical occupancy and intent to reside there. “Physical occupancy on  
4 the filing date *without* the requisite intent to live there, is not sufficient to establish  
5 residency.” *In re Gilman*, 887 F3d 959, 965 (9<sup>th</sup> Cir. 2018) (emphasis added) (citing  
6 with approval *In re Diaz*, 547 B.R. 329, 336 (9<sup>th</sup> Cir. B.A.P. 2016)).

7 In reviewing Arizona’s homestead exemption statutes, the Court in *Calderon* held  
8 that:

9 On the petition date, if the debtor has been living elsewhere  
10 for less than two years, only evidence of a clear intent of  
11 permanent removal will suffice to permit the bankruptcy  
12 court to find that the debtor has abandoned his homestead  
13 exemption under Arizona law. On the other hand, on the  
14 petition date, if the debtor has been living elsewhere for two  
years or more, then the debtor is presumed to intend for the  
removal to be permanent, and only evidence of a clear intent  
for the removal to be temporary will overcome that  
presumption.

15 *In re Calderon*, 507 B.R. at 732.

16 The crucial question for this Court to decide is, whether the Debtors (or even one  
17 of the Debtors) intended *on* the Petition Date, that the New River Property be their  
18 homestead.

19  
20 **B. The Court’s Findings of Fact**

21 The Debtors bought the Scottsdale Property in 1997 and lived there continuously  
22 until 2013. During this time period, the Scottsdale Property was their exempt homestead.  
23 This fact is not in dispute.<sup>26</sup>

24 The Debtors bought the New River Property in 2013 and lived there until May or  
25 June 2016. During this time period, the New River Property was their exempt homestead.

26  
<sup>26</sup> See the Joint Pretrial Statement (DE 177) at page 10.



1 During that timeframe they leased the Scottsdale Property to a third party on a fairly long-  
2 term lease. These facts are not in dispute.<sup>27</sup>

3 The Debtors have three children, Sara (age 21), a middle school child<sup>28</sup> (age 14),  
4 and an elementary school child (age 10). Sara testified at the July 6 trial. She is a student  
5 at Arizona State University. She lives at the Scottsdale Property and has been living there  
6 since the family moved to that home in May or June 2016. The Court finds that Sara is  
7 articulate and smart. However, she was under obvious pressure and extreme discomfort  
8 in having been called to testify in her parents' bankruptcy case. The Court finds the  
9 Debtors manipulated their daughter into testifying in a manner tailored to their homestead  
10 contentions. The Court finds Sara's testimony unreliable and lacking in credibility. The  
11 Court finds that Sara's testimony was at the direction of, and solely for the benefit of, her  
12 parents in their quest to claim as their homestead the property with the greatest possible  
13 exemption amount.

14 Debtors both testified that, on the Petition Date, they intended to reside at the New  
15 River Property. The Court carefully listened to and studied the Debtors during their  
16 testimony and finds their testimony lacking in credibility. Mr. Mailatyar's testimony was  
17 well rehearsed, but far too insincere and overstated. He knows full well that his financial  
18 interests would be best served if the equity in the New River Property is protected by a  
19 homestead exemption. His testimony was tailored to fit that interest even though he has  
20 lived in the Scottsdale Property, works nearby, and leases out the New River Property for  
21 short-term rentals. The Court did not believe his claim that he often spends weekends at  
22 the New River Property. The Court did not believe that either of the Debtors intended  
23 on the Petition Date to reside in the New River Property, or even that the Debtors actually  
24 intended to live there at some future time. Like the State Court, this Court finds  
25

26 <sup>27</sup> See the Joint Pretrial Statement (DE 177) at page 10.

<sup>28</sup> Pursuant to Bankruptcy Rule 9037, the Court will not name these minor children in this Ruling.

1 Mr. Mailatyar's testimony lacking in credibility.

2 Since the New River Property is frequently leased on a short-term basis, the  
3 Debtors must periodically travel to that property to handle their landlord obligations.  
4 Their limited presence at the New River Property is not mistaken by this Court as an  
5 intent to reside there. Except for the furniture and appliances needed to provide adequate  
6 accommodations for short-term tenants, the Debtors' personal property (especially their  
7 valuable property) is located at the Scottsdale Property.

8 All the Mailatyars took pains to describe tension in the Debtors' marriage. The  
9 Court does not doubt that Ms. Mailatyar is irritated by Mr. Mailatyar's conduct which  
10 resulted in the Wright judgment and the filing of this bankruptcy. However, both Mr.  
11 and Ms. Mailatyar allegedly work together in adjoining offices,<sup>29</sup> they both sleep at the  
12 Scottsdale Property, and they raise their minor children in that same home. Prior to the  
13 Petition Date, virtually all their mail went to the Scottsdale Property, including their many  
14 joint bills, bank account statements, and investment account statements. Debtors have  
15 been married for 25 years and neither of them intend to pursue a marital separation or  
16 divorce. Importantly, in her 2017 deposition,<sup>30</sup> Ms. Mailatyar indicated she "lived at the  
17 Scottsdale Property." This was her testimony *before* the homestead exemption was at  
18 issue and *before* it was clear to the Debtors that her 2017 testimony was against their  
19 newly realized best interests. The Court finds Ms. Mailatyar's prior testimony was  
20 truthful and more credible than her post-Petition Date testimony.

21 In May or June 2016, the Scottsdale Property lease expired after which time the  
22 Debtors moved out of the New River Property and back into the Scottsdale Property. The  
23 Court finds that when the Debtors moved from the New River Property, Debtors intended

---

24 <sup>29</sup> Mr. Mailatyar arranged for Ms. Mailatyar to be placed on the payroll so the company's health insurance could be  
25 obtained by her. The Court has serious doubts about whether Ms. Mailatyar does much or any work in return for  
26 her salary and insurance coverage. The Court suspects Mr. Mailatyar's salary was reduced so the company could  
pay Ms. Mailatyar and place her on the insurance rolls.

<sup>30</sup> Edyta Mailatyar Dep., Feb. 16, 2017, Ex. 36.

1 to abandon that property as their homestead and reestablished their homestead in the  
2 Scottsdale Property. Mr. Mailatyar testified that, after moving out of the New River  
3 Property, he intended to remain in the Scottsdale property until his youngest child  
4 completed high school in Scottsdale. Approximately 17 months later, the Debtors filed  
5 bankruptcy. Their youngest child was then 10 years old and had 8 ½ years left before  
6 completing high school. In other words, Mr. Mailatyar's testimony revealed that when  
7 the Debtors moved back to the Scottsdale Property in the summer of 2016, he intended  
8 to reside in the Scottsdale property for the next 10 years. The Court finds that  
9 Ms. Mailatyar had the same intentions. This Court finds that when the Debtors moved  
10 in the summer of 2016, neither of the Debtors intended to ever move back to the New  
11 River Property. Their intentions had not changed by the Petition Date.

12 To put this in the context of the presumptions referenced in *Calderon, supra*, the  
13 Debtors had not resided in the New River Property for at least 17 months *before* the  
14 Petition Date and the Debtors did not intend to return to the New River Property for at  
15 least 8 ½ years *after* the Petition Date. That is a 10 year intended absence from the New  
16 River Property. Consistent with *Calderon*, this Court finds the Debtors needed to  
17 demonstrate a clear intent to overcome the presumption that the Debtors intended to  
18 abandon the New River Property as their homestead for a period of 10 years when the  
19 Debtors' moved from the New River Property and relocated to the Scottsdale Property.  
20 The Debtors have not demonstrated a clear intent to maintain the New River Property as  
21 their homestead. Moreover, in construing both the Debtors' relocation to the Scottsdale  
22 Property in the summer of 2016 and Mr. Mailatyar's claimed intent to return to New  
23 River 10 years later, neither indicate credible evidence of a New River homestead.

24 Even if *Calderon* could be read to rigidly fix at two years (prior to a bankruptcy  
25 filing) the time in which a homestead declarant must be removed from their homestead  
26 in order for the presumption of abandonment to arise, this Court nevertheless finds

1 Wright introduced clear proof to the Court evidencing the Debtors' abandonment of the  
2 New River Property as their homestead.

3 When the Debtors moved out of the New River Property in May or June 2016, it  
4 was because Ms. Mailatyar did not like New River.<sup>31</sup> The New River Property is a long  
5 distance from the place where the Debtors worked. The Scottsdale Property is a short  
6 five minutes from their office. Most significantly, the Scottsdale Property is within  
7 walking distance of the Debtors' youngest child's elementary school and very near their  
8 other child's middle school. Ms. Mailatyar is the family member who principally handles  
9 driving for their younger children. She is also the primary shopper for all household  
10 supplies and food. The Court finds the child rearing responsibilities in the Mailatyar  
11 family are handled predominantly by Ms. Mailatyar. It defies reason to suggest she  
12 would live in distant New River when all her relationships, energy, and life's work are  
13 centered in Scottsdale. Moreover, the Court does not believe Ms. Mailatyar ever intended  
14 to return to New River, an outlying Maricopa County area, which she disliked.

15 Debtors' Closing Brief contends that:

16 the most powerful evidence presented by the Debtors as to  
17 their intent to declare the Venado [New River] Property their  
18 homestead was the schedules filed on the petition date that  
set forth in Schedule C the Venado [New River] Property as  
their homestead.<sup>32</sup>

19 If Debtors' argument is taken to its logical extreme, an exemption claimed on the same  
20 date as a debtor's bankruptcy filing could never be successfully challenged. The Court  
21 finds the Petition Date homestead exemption declared by the Debtors in this case was  
22 false. This Court finds that neither of the Debtors had the intention that the New River  
23 Property be their homestead on the Petition Date.

24 Debtors argue that Wright concedes Ms. Mailatyar lives at the New River Property  
25

26 <sup>31</sup> See Ex. EM2, where Ms. Mailatyar testified that: "I just didn't like New River."

<sup>32</sup> Debtors' Closing Brief at 7.

1 because Wright notes on page 4 of the Joint Pretrial Statement that:

2 at most, one of the 5 members of the Debtors' family (Edyta)  
3 resides part time at the Venado [New River] Property. The  
4 alleged part time use of the Venado [New River] Property is  
5 illegitimate and in bad faith, and is insufficient to transform  
such property into a homestead residence under Arizona  
law.<sup>33</sup>

6 The Court does not read this language as Wright's concession that Ms. Mailatyar resides  
7 at the New River Property. Rather, Wright contends *no one* in the Mailatyar family  
8 resided at the New River Property on the Petition Date and neither of the Debtors  
9 intended that the New River Property was their homestead on the Petition Date. The  
10 language quoted above is an alternative argument posed by Wright. While that argument  
11 is rejected below, the Court recognizes this "bad faith" argument was pled in the  
12 alternative to Wright's principal argument; namely that Debtors did not reside in the New  
13 River Property nor did they have the intent to reside there in the future at the time they  
14 filed this bankruptcy.

15 The Debtors' Closing Brief argues that the Debtors' good or bad faith in claiming  
16 the subject homestead exemption is *not* properly an issue currently before the Court when  
17 determining whether a claimed exemption should be approved by the Court. With this,  
18 the Court concurs. Although the Court finds the testimony of both Debtors in these  
19 bankruptcy proceedings lacking credibility, this is not to say their homestead exemption  
20 is denied because of their lack of candor to this tribunal.

21 In response to a question posed to the parties at the conclusion of the trial, the  
22 Debtors' Closing Brief contends the Debtors' actions or inactions subsequent to the  
23 Petition Date are irrelevant to the question of the Debtors' homestead intentions on the  
24 Petition Date. The Court agrees. The Debtors' intent *on* the Petition Date is the key  
25 question before the Court. The Debtors' post-Petition Date overt actions, failures to act,

26 

---

<sup>33</sup> DE 177.

1 and subjective intentions are irrelevant in determining the Debtors' Petition Date  
2 homestead intentions. Evidence concerning post-Petition Date matters is irrelevant to  
3 Debtors' Petition Date intentions and will not be addressed in this Ruling.

4 Wright's Closing Brief argues, for the first time, that Wright holds an equitable  
5 lien against the New River Property, which lien is senior to any homestead exemption  
6 the Debtors may claim against that property. Wright contends the Debtors wrongfully  
7 obtained money from Wright and then used that money to reduce their obligations owed  
8 on the New River Property. This pay-down then increased the amount of equity existing  
9 over and above the first lien on that property. Wright cites Bankruptcy Judge Marlar's  
10 *In re Farnsworth*, 384 B.R. 842, 849 (Bankr. D. Ariz. 2008) decision, among others, for  
11 the proposition that an equitable lien defeats a homestead exemption where the lien was  
12 imposed due to the homeowner's misdeeds pertaining to the subject residence. All the  
13 cases cited by Wright pre-date the U.S. Supreme Court's case of *Law v. Siegel*, 571 U.S.  
14 415 (2014). In *Law*, the Court held that a debtor's bad faith conduct may *not* stand as a  
15 basis to deny or surcharge a debtor's claimed homestead exemption. *Id.* *Law* casts a  
16 shadow over the continued viability of the cases cited by Wright. However, this Court  
17 need not reach the issue of the viability of those cases because the Court is resolving this  
18 matter on other grounds. Moreover, even if this Court overruled Wright's Homestead  
19 Objection, he correctly points out in footnote 2 to his Closing Brief that his equitable lien  
20 argument would need to be tested in an adversary proceeding.<sup>34</sup> Because this Court is  
21 ruling that Wright prevails on his Homestead Objection, his claimed equitable lien  
22 argument is moot and, in any event, not ripe before the Court for resolution.

23  
24  
25  
26  

---

<sup>34</sup> See Fed. Bankr. R. P. 7002(2).

1 **V. CONCLUSION**

2 This Court finds the Debtors' testimony regarding their claimed homestead  
3 exemption was not credible. They moved out of the New River Property in the summer  
4 of 2016 because the lengthy lease of their Scottsdale Property had expired, it was not  
5 convenient to their work lives and family activities which were located in Scottsdale, and  
6 Ms. Mailatyar did not like living in New River. When the Debtors moved out of the New  
7 River Property, they abandoned that property as their homestead and reestablished the  
8 Scottsdale Property as their homestead.

9 Wright's Homestead Objection is sustained. The Debtors' homestead exemption  
10 claim is only proper on their Scottsdale Property. The bankruptcy stay is hereby lifted  
11 so that Wright may pursue his judgment lien remedies against the New River Property.

12 **DATED AND SIGNED ABOVE.**

13  
14 To be Noticed through the BNC to:  
15 Interested Parties

16 Mark J. Giunta  
17 Liz Nguyen  
18 Law Office of Mark J. Giunta  
19 531 E. Thomas Rd., Suite 200  
Phoenix, AZ 85012

20 Isaac M. Gabriel  
21 Amelia B. Valenzuela  
22 Quarles & Brady LLP  
23 Renaissance One  
Two N. Central Ave.  
Phoenix, AZ 85004-2391

24 Nathan F. Smith  
25 Malcolm Cisneros, a Law Corporation  
26 2112 Business Center Drive  
Irvine, CA 92612